

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CREIGHTON TAKATA, Individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

RIOT BLOCKCHAIN, INC. F/K/A,
BIOPTIX, INC., JOHN O'ROURKE,
and JEFFREY G. McGONEGAL,

Defendants.

Civil No. 3:18-CV-02293(FLW)(ZNQ)

MOTION DATE: May 3, 2021

ORAL ARGUMENT REQUESTED

**RIOT BLOCKCHAIN INC.'S REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF ITS REPLY IN SUPPORT OF ITS MOTION TO DISMISS
THE CONSOLIDATED SECOND AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS**

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TO LEAD PLAINTIFF DR. STANLEY GOLOVAC’S AND TO HIS
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to the Federal Rules of Evidence 201, Defendant Riot Blockchain, Inc. (“Riot”) hereby requests that the Court take judicial notice of the existence, contents, and legal effects of the following documents attached as exhibits to the Declaration of Daniel Scott Carlton:

Exhibit A: Exhibit 10.1 of Bioptix, Inc.’s March 16, 2017 Form 8-K filed with the SEC.

Exhibit B: Exhibit 10.1 of Riot’s December 19, 2017 Form 8-K filed with the SEC.

I. **ARGUMENT**

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), “courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on a Rule 12(b)(6) motion . . . in particular, documents incorporated in the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Furthermore, Federal Rule of Evidence Rule 201 allows a court to take judicial notice of facts that are “capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” Fed. R. Evid. 201(b)(2).

In this case, each of the documents attached as exhibits to the Declaration of Daniel Scott Carlton is properly considered in connection with the Riot's concurrently filed Reply In Support of its Motion to Dismiss the Consolidated Second Amended Class Action Complaint (Dkt. No. 188) (the "SAC") under (1) the incorporation by reference doctrine and (2) Federal Rule of Evidence 201(b)(2), which permits the Court to consider public records.

A. **The Court Must Consider Riot's SEC Filings Because They Have Been Incorporated by Reference Into the SAC**

Under settled law, a document is incorporated by reference into a complaint if it is "integral to and/or [is] explicitly relied upon by . . . the complaint." *Winer Family Tr. v. Queen*, 503 F.3d 319, 328 (3d Cir. 2007) (ruling that the district court properly considered documents attached to the defendants' motion to dismiss). Documents that are integral to or explicitly relied upon the complaint may be considered by courts without "converting the motion to dismiss into one for summary judgment." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). This prevents Lead Plaintiff from "maintain[ing] a claim of fraud by extracting an isolated statement from a document and placing it in the complaint, even though if the statement were examined in the full context of the document, it would be clear that the statement was not fraudulent." *Id.*

Lead Plaintiff expressly references and relies on Riot’s SEC filings in the SAC. As such, Riot requests that the Court consider the contents of each of the following documents under the incorporation by reference doctrine:

<u>Document</u>	<u>Exhibit No.</u>	<u>SAC ¶</u>
Exhibit 10.1 of Bioptix, Inc.’s March 16, 2017 Form 8-K	A	389
Exhibit 10.1 of Riot’s December 19, 2017 Form 8-K	B	416

B. The Court Should Take Judicial Notice of Public Records Pertinent to Riot’s Reply Brief In Support of Its Motion to Dismiss

It is well settled that public records can be considered on a motion to dismiss. *See Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993); *see also* Fed. R. Evid. 201(b)(2) (permitting courts to take judicial notice of facts that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). “SEC filings fall within this category of public records that can be judicially noticed.” *In re Delmarva Sec. Litig.*, 794 F. Supp. 1293, 1299 (D. Del. 1992); *see also Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (ruling that courts may take judicial notice of SEC filings in ruling on a motion to dismiss).

Thus, the Court should also take judicial notice of Exhibit 10.1 of Bioptix, Inc.’s March 16, 2017 Form 8-K and Exhibit 10.1 of Riot’s December 19, 2017 Form 8-K because they are public records filed with the SEC.

II. CONCLUSION

For the foregoing reasons, Riot respectfully requests that the Court take judicial notice of Exhibits A through B attached to the Declaration of Daniel Scott Carlton, and consider them in connection with its adjudication of Riot's motion to dismiss.

DATED: April 26, 2021

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